



Roselands & Stafford
Federation

East Sussex County Council Procedure for the Management of Unacceptable Performance

Document control:

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Signed by	Name	Signature	Date
Headteacher	John Maxwell		
Chair of Governors	Jon Nay		

Procedure for the Management of Unacceptable Performance



Date: June 2019

Document summary

This policy sets out the County Council's agreed approach to managing organisational change. It describes the adopted principles concerning restructuring, redundancy and pay protection.

Enquiries

HR Advisory Team, 01273 481300

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Document summary

Improving staff performance positively impacts on service delivery. The Procedure for the Management of Unacceptable Performance sets out a fair and systematic approach to address shortfalls in an employees' performance.

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Procedure for Management of Unacceptable Performance

Key points

- There is an agreed procedure for managing unacceptable performance that must be followed.
- It is important to manage performance in a fair and consistent way.
- Line managers are responsible for managing performance with support from Personnel and Training.
- The overall objective is for the manager to assist the employee in the most appropriate way to improve their performance in their current post.
- Incidents of unacceptable performance should be identified and dealt with as soon as possible, preferably in an informal way.

1. What is unacceptable performance?

1.1. It is performance that falls below the standards that have been set, or that could reasonably be expected of, a member of staff. Under the Employment Rights Act 1996 an employee's performance can be assessed by reference to skill, aptitude, ability and/or any other physical or mental capacity, for example, lack of skill or ability in achieving business objectives such as frequent errors in work.

2. How does it differ from Discipline?

2.1. In the beginning it may not be clear whether the problem is due to misconduct or unacceptable performance. If it is misconduct then the manager will need to refer to the [Disciplinary Policy and Procedure](#). If a case is initially dealt with under the Disciplinary Procedure it should be transferred to the Procedure for the Management of Unacceptable Performance immediately it becomes clear that performance issues are involved.

3. What if an employees health is affecting their performance?

3.1. If it is clear that an employee's health is affecting their attendance at work and/or their performance, managers should contact their Personnel Officer and refer to the [Attendance Management Procedure](#).

3.2. You may need to consider whether an employee has a disability as defined in the Equality Act 2010 and therefore whether reasonable adjustments need to be made. Guidance and advice on the Act is available from your HR Adviser.

4. Why is it important to manage unacceptable performance?

4.1. It is important to manage unacceptable performance because of the impact on the individual, the team and the Council as a whole:

- Team morale may dip when a member of staff is not performing
- It can lower individual and team efficiency and effectiveness and compromise service delivery
- If unacceptable performance is not managed, it will waste valuable time and energy for managers to rectify the situation.

5. Who is covered by the procedure?

5.1. The procedure applies to all employees with the exception of:

- Teachers;
- teaching staff in schools where the governing body have adopted the policies for teaching staff as an alternative;
- employees with less than one year's service or employees who are on Appointment Support Procedure. Refer to the [Supported Introduction to Employment Policy](#).

6. Should the case be dealt with informally first?

6.1. All cases of poor performance should normally be dealt with informally in the first instance, unless it is likely to endanger the Health and Safety of other people or if the poor performance will have a significant impact on the business.

7. Can an individual grievance be raised during this process?

7.1. In the event that an employee raises a grievance in the course of implementing this procedure, or there remains an outstanding grievance, the Council will normally suspend consideration of the grievance until the outcome of implementing this procedure is known. Each case will, however, be considered on its merits to ensure that the County Council is acting reasonably.

8. Is it possible to enter the formal procedure at stage 2 or 3, without the previous stages being followed?

8.1. Yes - in exceptional circumstances (e.g. significant impact on the business, or where the unacceptable performance endangers the Health & Safety of other employees and/or members of the public). This might also apply where an employee's performance has already been reviewed as part of this procedure, only for it to deteriorate again in a relatively short period of time. This decision should be made after consultation with a HR Adviser.

9. Who can offer support during this process?

9.1. If at any time during this process the employee wishes to seek counselling they can seek advice from the Staff Counselling Service on 0800 731 8631.

10. Representation

10.1. Employees may be accompanied by a recognised Trade Union Representative or work-place colleague, not acting in a professional capacity, at all *formal* stages of this procedure.

10.2. There is no right to legal representation at any stage of this procedure.

10.3. Managers should inform an employee in writing that they may be accompanied if the formal stage of this procedure is commenced. It is the responsibility of each employee to arrange their own representation.

The formal procedure

11. Applying the formal procedure

11.1. When a manager considers that an employee is not performing to the appropriate standard and informal discussions have not resulted in improvement, the manager should then move on to the formal stages.

11.2. Full and detailed records should be kept by the manager at each stage of the procedure identifying the reasons for the employee's failure to meet the required standards of performance, the manager's response, any action logged and dated to ensure timescales are adhered to. Notes of all meetings should be kept and made available to the employee.

11.3. Managers dealing with performance issues at the formal stages of this procedure should seek advice from their HR Adviser.

12. Stage one (eight weeks' duration)

12.1. A formal meeting should be convened to outline the concerns. The discussion should be full and wide-ranging in an environment of support. The employee's poor performance must be identified clearly and openly. If documentary evidence is available, it must be discussed with the employee and copies made available. The employee's explanations must be considered and explored to determine precise reasons for unacceptable performance.

12.2. The standard of work expected, the improvement needed and the appropriate action and time scale for achieving this will be identified, agreed and confirmed in writing by the manager. A timetable of regular monitoring sessions with the line manager will be arranged. These sessions may coincide with or replace normal or existing supervision arrangements.

12.3. The timetable will include two formal review meetings (usually after 4 and 8 weeks) to discuss progress, identify any further concerns not previously identified and review the support and monitoring programme.

12.4. The purpose of the second formal review meeting will be to determine whether satisfactory progress has been made. If yes, clarify any ongoing support through management supervision. If no, issue a Notification of Concern in writing that performance continues to be unsatisfactory and move on to Stage Two of this procedure. The Notification of Concern will remain live for 12 months. Under exceptional circumstances the manager, in consultation with Personnel and Training, may consider an extension of the eight week review period.

12.5. The employee has the right of appeal against the Notification of Concern. Any appeal should be made in writing to the manager within 5 working days of the date on which the Notification of Concern was received. The appeal will be heard by a more senior manager than the one who issued the Notification of Concern.

12.6. During Stage One the manager and the employee may wish to discuss whether either party consider that the post is not appropriate for the employee and whether redeployment to a suitable alternative post should be considered. Refer to the [Redeployment Policy](#).

13. Stage two (six weeks' duration)

13.1. A formal meeting should be convened to outline concerns and discuss and agree a further period of support and monitoring.

13.2. The results of Stage One and the monitoring process will be fully discussed with the employee and reviewed objectively. The employee will give their assessment of the progress achieved, and the support and training made available during Stage One.

- 13.3. The manager will consider how far performance has improved, whether it has been sustained and the shortfall(s) against the target(s) set during Stage One. A new action plan will be identified, agreed and confirmed in writing clearly outlining targets to be achieved in order to bring the level of performance up to an acceptable standard during Stage Two.
- 13.4. Again, a timetable of regular monitoring sessions with the line manager should be arranged to include a further two formal review meetings (usually after 3 and 6 weeks) to discuss progress and review the monitoring and support programme.
- 13.5. If the employee achieves the required improvement by the specified date, they will be informed in writing and any ongoing support through management supervision will be clarified. The Notification of Concern issued at Stage One will remain live for a period of 12 months. If there is a recurrence of the unacceptable performance within 12 months then it will be appropriate to re-enter this procedure at Stage Two.
- 13.6. After the second formal review meeting, if the employee is still underperforming the manager should issue a formal warning in writing that the performance continues to be unsatisfactory and that failure to improve could lead to their dismissal. This warning will remain live for 18 months. The employee has the right of appeal against this warning. Any appeal must be made in writing to the manager within 5 working days of the date on which the written warning was received. The appeal will be heard by a more senior manager than the manager who issued the warning.
- 13.7. During Stage Two the manager and employee may wish to consider whether it would be appropriate to seek redeployment to a suitable alternative post.

14. Stage Three (four weeks' duration)

- 14.1. A formal meeting should be convened to outline concerns and emphasise the seriousness of the situation. A final programme of support and monitoring should be discussed and agreed, emphasising that significant and rapid improvement in performance is required.
- 14.2. A final review meeting should be arranged (usually after 4 weeks).
- 14.3. The purpose of the final formal review meeting will be to determine whether or not satisfactory progress has been made. If yes, then the employee will be informed in writing and any ongoing support through management supervision will be clarified. The formal warning issued at Stage Two will remain live for a period of 18 months. If there is a recurrence of the unacceptable performance within 18 months then it will be appropriate to re-enter this procedure at Stage Three.
- 14.4. If the employee's performance remains unacceptable and the discussions on alternative courses of action such as redeployment or further training have been exhausted, a decision may be taken to recommend the employee's dismissal on the grounds of capability.
- 14.5. The employee should be suspended (with pay) pending the dismissal hearing, which should be arranged as soon as possible following the final review meeting.

The dismissal hearing

15. Format of the dismissal hearing

- 15.1. Where it is decided to refer the case to a dismissal hearing the employee will be given at least **ten full working days** notice. The invitation to a dismissal hearing will clearly state the areas of concern around the employee's performance and the right to representation. Copies of the management case and any supporting information which may be referred to at the hearing will be enclosed, including any witness statements.
- 15.2. The employee should be informed that either party can produce witnesses and/or written witness statements and relevant supporting documents at the dismissal hearing, should they wish to do so. The employee is required to submit any supporting statements or documentation **five full working days** before the hearing.
- 15.3. All paperwork will therefore be circulated to both parties at least **five working days** before the dismissal hearing as no additional documentation will be accepted as evidence on the day.

16. Attendance at the dismissal hearing

- 16.1. The dismissal hearing will be heard by a senior manager, accompanied by an advisor from Personnel and Training (PAT).
- 16.2. The employee will attend the hearing and is entitled to be accompanied by a Trade Union representative or workplace colleague.
- 16.3. If the employee is unable to attend the hearing, an alternative date will be arranged, ideally within five working days of the first date. If they are unable to attend that hearing it will be held in their absence, but a representative will be given the opportunity to present the employee's case on their behalf.

17. Witnesses

- 17.1. If the manager presenting the case or employee wishes to call witnesses at the hearing, their identity will be disclosed to the other side in advance, unless exceptional circumstances prevent this where anonymity has to be preserved.
- 17.2. It is preferable that witnesses who have made statements attend the hearing, although this cannot be mandatory if they are not a Council employee.

18. Presentation of the Council's case

- 18.1. The manager hearing the case for dismissal will make introductions and outline the process to be followed to ensure that everyone present understands what is going to happen.
- 18.2. The manager will be advised throughout the hearing by an advisor from Personnel and Training (PAT). The advisor will take notes of the meeting throughout which will then be available to all parties present.
- 18.3. The employee's line manager will then present their case highlighting key points and calling any witnesses if any to present their evidence. The line manager will refer to any documents as necessary.
- 18.4. The employee and/or their representative may question any witnesses or question the line manager on their evidence.
- 18.5. The manager hearing the case may also question any person present.

18.6. Each witness will join the hearing to give evidence and leave after doing so, although they may need to be recalled if necessary.

19. Presentation of the employee's case

19.1. The employee or representative presents their case, referring to any relevant documents, and calling any witnesses as appropriate.

19.2. The line manager may question the employee or any of the witnesses on their evidence.

19.3. The manager hearing the case may also question any person present.

19.4. Each witness will join the hearing to give evidence and leave after doing so, although they may be recalled if necessary.

20. Summing up

20.1. The line manager summarises the main points of the case.

20.2. The employee or their representative summarises the main points of their case, including any mitigating circumstances.

20.3. At this stage no new evidence may be introduced. The line manager, the employee and their representative then leave the meeting.

21. The decision

21.1. The manager hearing the case will consider whether there is sufficient grounds to dismiss the employee because of their poor performance. The manager should take into account any mitigating circumstances. If further clarification of information is required in order to make a decision, both parties will be recalled, or the hearing adjourned until the information is provided.

21.2. The manager should hear and consider all the evidence available at the time of the hearing.

21.3. The manager will read out their decision, including the reasons for it. If dismissal is recommended, the employee will be dismissed with the appropriate notice and informed of their right of appeal. In complex cases deliberation may take some time. If this occurs a decision should be made within **2 working days** of the conclusion of the hearing, and, in both situations the outcome of the hearing should be confirmed in writing within **5 working days**.

21.4. If the dismissal is confirmed then the employee will be given contractual notice on full pay. The employee should be told not to attend work during the notice period.

The appeal process

22. Making an appeal against dismissal

22.1. An employee may appeal against dismissal under this procedure, in writing, within **5 working days** of receipt of the letter confirming the decision to dismiss. The letter of appeal should state the reason for the appeal hearing.

22.2. Appeals against dismissal will be heard by a senior manager at Assistant Director level or above (referred to here as the Senior Manager). The Senior Manager will be at a higher level than the manager who originally heard the case. To ensure impartiality, the Senior Manager will have had no prior involvement in the case. A representative from Personnel and Training will act as their advisor. To exercise their right to appeal, the employee or their representative should write to the Chief Officer for their department.

23. Format of the appeal hearing

23.1. All appeals will be heard at the earliest possible date.

23.2. The employee will be informed in writing of the place, date and time of the hearing at least **10 working days** before the date of the appeal hearing.

23.3. New evidence is permissible at the appeal. If either party wishes to introduce new evidence, they should give at least **5 working days** notice to the other party, prior to the hearing.

23.4. Details of the new evidence together with the names/statements of any new witnesses should be given to the other party. If at the appeal hearing, the new evidence is of such significance that further investigation or information is required, it may be appropriate for an adjournment and to reconvene when this has been completed.

23.5. All paperwork will therefore be circulated to both parties at least **five working days** before the appeal hearing as no additional documentation will be accepted as evidence on the day.

23.6. The procedure will follow the same format as the Dismissal Hearing.

24. The decision

24.1. The Senior Manager will consider the matter in private and decide whether or not the case against the employee has been substantiated. If further clarification or information is required in order for a decision to be reached, both parties will be recalled or the appeal can be adjourned until the required information is provided.

24.2. The employee will normally be asked to wait for the Senior Manager's decision. However if the case is a complex one, the employee will be given the opportunity to leave and called back at a later time to receive the decision (accompanied wherever possible by their representative). In any event a decision will be made **within 2 working days** of the conclusion of the appeal hearing.

24.3. Either the Chief Officer for the department, the Senior Manager, or another nominated manager will confirm the decision to the employee in writing within **5 working days** of the conclusion of the appeal hearing.

25. The decision of the Senior Manager is **FINAL** and there is no further right of appeal within the County Council.